



**France Telecom**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

September 5, 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

**DOCKET FILE COPY ORIGINAL**

Re: In the Matter of Amendment of the Commission's  
Regulatory Policies to Allow Non-U.S.- Licensed  
Space Stations to Provide Domestic and International  
Satellite Service in the United States  
IB Docket No. 96-111 *et. al.*

Dear Secretary Caton:

Enclosed are an original and four copies of France Telecom's Reply Comments pursuant to the Commission's Further Notice of Proposed Rulemaking released July 18, 1997, in the above-captioned proceeding. Copies of our Reply Comments were hand-delivered or mailed today in accordance with the attached service list.

Also enclosed is an extra copy which we ask you to please date stamp and return to our messenger.

Sincerely yours,

Theodore W. Krauss  
France Telecom, Inc.  
Vice President  
Legal and Regulatory Affairs

Enclosures

C+Y

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Amendment of the Commission's )  
Regulatory Policies to Allow Non-U.S.- )  
Licensed Space Stations to Provide )  
Domestic and International Satellite Service )  
in the United States )

IB Docket No. 96-111

and

Amendment of Section 25.131 of the )  
Commission's Rules and Regulations to )  
Eliminate the Licensing Requirement for )  
Certain International Receive-Only Earth )  
Stations )

CC Docket No. 93-23  
RM-7931

and

\_\_\_\_\_  
COMMUNICATIONS SATELLITE )  
CORPORATION Request for Waiver of )  
Section 25.131(j)(1) of the Commission's )  
Rules As It Applies to Services Provided )  
via the INTELSAT K Satellite )  
\_\_\_\_\_ )

File NO. ISP-92-007

**REPLY COMMENTS OF FRANCE TELECOM**

France Telecom ("FT") is encouraged by the prospect of liberalization and fair competition worldwide. As the world's fourth largest telecommunications company and the second largest in Europe, FT is active worldwide and as such has a keen interest in the promotion of open markets worldwide. Pursuant to the Commission's Further

Notice of Proposed Rulemaking (FNPRM)<sup>1</sup> released July 18, 1997 in the current docket, France Telecom (“FT”) hereby respectfully submits its reply comments.<sup>2</sup>

Three areas of concern in particular merit attention: specifically, the importance that the FNPRM proposals comply with the GATS principles with respect to (i) market access (Article XVI of the GATS); (ii) domestic regulation (Article VI of the GATS); and (iii) national treatment (Article XVII of the GATS). These points are addressed below. Reference is also made to FT’s July 9, 1997 comments in proceeding 97-142 in view of the similarity of the issues raised in the instant FNPRM with those discussed in such comments.

#### **I. Market Access (Article XVI of the GATS)**

The letter and spirit of the GATS and the WTO Basic Telecom Agreement call for clear and predictable market opening rules and policies. FT is concerned that the broad public interest criteria in the FNPRM may violate GATS Article XVI which requires, among other things, each WTO Member to accord services and service suppliers of any other Member treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its own Schedule. The FNPRM refers to notions of “public interest” criteria such as “national security, law enforcement, foreign

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<sup>1</sup> See Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket 96-111 *et. al.* (released July 18, 1997), Further Notice of Proposed Rulemaking (“FNPRM”).

<sup>2</sup> For ease of reference, capitalized terms not otherwise defined herein have the meaning attributed to them in the FNPRM or in the GATS.

policy, and trade concerns” (§37) and “very high risk to competition” (§ 13). These notions leave room for uncertainty in the licensing process.

FT respectfully submits that the scope of the Commission’s “public interest” review should be narrowly tailored and clarified. It is crucial that the Commission adopt rules and policies void of ambiguity and beyond reproach, since the Commission’s actions will influence how other nations implement their own commitments. The Commission should not adopt rules and policies which may be viewed as an attempt to claw back the WTO Basic Telecom Agreement commitments made by the U.S. Otherwise, the U.S.’ trading partners may feel compelled to revisit their own policies, and market opening initiatives elsewhere will be jeopardized. (See Comments of Air Touch at p.2; Comments of Skybridge at p.7).

In particular, the Commission should clarify that “public interest” considerations will not be used to reinstate trade or other considerations which are incompatible with the MFN and National Treatment principles under the GATS. All trade considerations should have been dealt with in the WTO Basic Telecom Agreement which is a trade agreement.

Thus, FT concurs with Lockheed Martin Corporation’s comment that “[i]n crafting rules for assessing applications to access systems from WTO-member countries, the Commission must remain true to the commitments of the U.S. Government to the WTO Agreement ... the Commission must be very careful that the public interest assessment is neither used nor perceived as a surrogate for consideration of trade issues

which were put to rest with the U.S. commitment in the WTO to open our telecommunications market.”<sup>3</sup>

A similar problem is raised by the abstract notion of “very high risk to competition” which leaves room for action which may contradict market access commitments under the guise of competition concerns. It is unclear what would constitute a sufficient showing to allow a party opposing the grant of a license to a WTO satellite system to succeed in demonstrating that the grant would pose a very high risk to competition (FNPRM at ¶ 13). At a minimum, any *a priori* review of competition concerns included in licensing procedures will again set a poor example for other countries which may adopt similar procedures for protectionist purposes.

With respect to market access by future Intelsat and Inmarsat affiliates, if the Commission decides to adopt an *a priori* review of competition issues in the IGO affiliate licensing process, any conditions which may be imposed on the affiliate’s license should be very narrowly crafted so as to avoid hampering the ability of the IGO affiliate to compete fairly and effectively. Furthermore, direct or indirect government ownership of an Intelsat or Inmarsat affiliate should not prevent such affiliate from obtaining a license from the Commission.

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<sup>3</sup> See Lockheed Martin Corp. Comments at p. 6. See also Comments of Telesat Canada at p. 6 (“Specifically, with any open-ended “public interest, convenience, and necessity” test, foreign satellite operators contemplating entry into U.S. markets will have no clear idea of exactly what they must do to ensure that authorization will be granted”), and Comments of Skybridge at p. 4 (stating that the public interest analysis is vague and undefined and leaves the Commission with broad discretion to deny applications).

## **II. Domestic Regulation (Article VI of the GATS)**

GATS Article VI requires, among other things, that the Commission's rules be administered in a reasonable, objective and impartial manner. As discussed above in Section I, the FNPRM's broad concept of "public interest" and lack of clarity regarding the notion of a "very high risk to competition" give rise to uncertainty in the licensing process. Consequently, it may be difficult for the Commission to administer the proposed rules without running afoul of GATS Article VI.

## **III. National Treatment (Article XVII of the GATS)**

The FNPRM accurately points out (¶ 8) that under the GATS national treatment principle, a WTO member must treat foreign services and service suppliers seeking to serve its country no less favorably than it treats its national services and service suppliers. Thus, for example, if the Commission decides to apply an ECO-Sat test for non-WTO route markets to satellites from other WTO countries, it would also be necessary to apply this approach to U.S.-licensed satellites (see ¶ 26 of FNPRM).<sup>4</sup> Likewise, it would be inappropriate to retain a licensing requirement for receive-only stations operating with non-U.S. satellites, and not for those operating with U.S. satellites. Just because such stations appear to be used today essentially for services which are not covered by the U.S.

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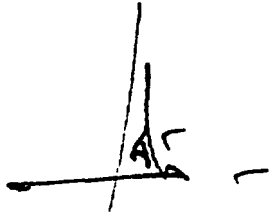
<sup>4</sup> Most commenting parties in this proceeding agree that the "national treatment" GATS obligation would not permit the Commission to impose the ECO-Sat test on WTO member satellites providing service from the U.S. to non-WTO route markets without imposing the same restrictions on U.S. satellites. See for e.g., Comments of GlobeCast at p.3; Comments of Qualcomm at p.4; Comments of Skybridge at p.3. Even Panamsat recognizes that using the ECO-Sat analysis in such a context "may be inconsistent with the U.S. government's national treatment obligations under the GATS". Comments of Panamsat at p. 5.

for services which are not excepted from the U.S.' commitment schedule (even if such services are limited today or may only be developed in the future) (see ¶¶ 56-57 of FNPRM). The Commission should simply carve out services which have been excluded from its schedule of commitments.

## CONCLUSION

FT respectfully requests that the Commission adopt rules and policies in this proceeding which are void of ambiguity and consistent with these comments.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that I have this 5th day of September, 1997, caused copies of the foregoing Reply Comments of France Telecom to be served by hand or delivered by first class mail to the following:

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